HON'BLE THE CHIEF JUSTICE SRI G.S. SINGHVI

Writ Petition No.1493 of 1992

Between:

Kommidi Narsaiah and 27 others. … Petitioners

And

The State of Andhra Pradesh and 3 others … Respondents

Counsel for the Petitioners: Sri K. Govind

Counsel for Respondents: Government Pleader for Irrigation

::ORDER::

April , 2006

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In this petition, the petitioners have prayed for issuance of a writ in the nature of mandamus directing the respondents to acquire lands comprised in Survey Numbers 1501, 1519 to 1524, 1532, 1537, 1539, 1543 to 1550, 1552, 1590, 1624 and 1625 situated in Garrepalli, Dubbapet, Sambayyapalli Villages, Sultanabad Taluq, Karimnagar District and pay them compensation.

The petitioners are agriculturists by profession. They are owners and pattedars of the land described hereinabove. According to them, there are wells in the land, which are used for raising commercial crops i.e., groundnut, chilly etc. The grievance of the petitioners is that their lands get submerged on account of over-flowing of Garrepalli tank and the cause of this is the regular flow of water from the canals constructed as a part of Sri Ram Sagar Project. In the affidavit filed by petitioner No.16, Rentala Takkayya, it has been averred that before 1980, about three to five hundred acres of land was irrigated through Garrepalli tank, whose water level did not exceed 8 to 10 feet in any rainy season, but, after construction of Sri Ram Sagar Project canals, there is a regular flow of water into the tank through Cherla Butkur and Ithrajpally Villages which are located in upper reaches of Garrepalli tank. It has been further averred that due to inflow of water from the canals, the water level of Garrepalli tank has increased up to 18 to 19 feet and their lands get submerged in it and makes impossible for them to undertake cultivation. According to Sri Rentala Takkayya, on the representations made by the villagers, Revenue Divisional Officer, Peddapally had written letter dated 6-8-1985 to the District Collector to remedy their grievances, but the respondents have not taken any action in the matter and they are being deprived of their property without the sanction of law and without payment of compensation.

In the counter-affidavit filed by the respondents in the form of affidavit of Sri Hiralal

Samariya, the then Joint Collector, Karimnagar, it has been averred that the survey numbers given in the affidavit of Sri Rentala Takkayya do not come under submergence of Garrepalli tank, except Survey Numbers 1501, 1537, 1545, 1546 and 1590 partly and Survey Numbers 1519 to 1520, 1548 to 1550 and 1552 fully. According to Sri Hiralal Samariya, in the last ten years i.e., 1981-82 to 1991-92, the lands were cultivated only in 1980-81 and 1981-82, when there was no Sri Ram Sagar Project canals in the village. Sri Hiralal has averred that some of the lands in Garrepalli village are covered by command area of Sri Ram Sagar Project canals, but the canals are not linked with Garrepalli tank. According to him, due to supply of water to the command area of Garrepalli village, some water occasionally goes to the tank, but the same does not result in submergence of the lands in question. Sri Hiralal has further averred that the total water storage capacity of the tank is 20 feet with registered ayacut of 1352.36 acres.

Sri K. Govind, learned counsel for the petitioners argued that as a result of submergence of their lands in the water of Garrepalli Tank, which overflows due to regular supply of water through Sri Ram Sagar Project canals, the petitioners are deprived of their right to cultivate the land for which no compensation has been paid by the respondents. He submitted that affidavit filed by Sri Hiralal Samaria contains unequivocal admission regarding submergence of lands and, therefore, the respondents should be directed to acquire the lands in question and compensate the petitioners.

Learned Government Pleader for Irrigation referred to report dated 4-7-2003 submitted by District Collector, Karimnagar in compliance of the Court's order dated 26-2-2003 and argued that the petitioners are not entitled to relief in terms of the prayer made because their lands are not submerged. He relied on the judgment of this Court in **Chittapolu Kishan and others v. Govt. of A.P.** and orders dated 9-7-2004, 18-1-2005 and 22-9-2005 passed in Writ Petition Nos.21540 of 1994 **(Gangadhar and others v. The District Collector, Nizamabad and others)**, 4828 of 1995 **(Sangam Pedda Veeraiah and others v. The District Collector, Nizamabad and others)** and 18832 of 2005 **(Shabanthi Pedda Bhimaiah and others v. The Revenue Divisional Officer, Nirmal, Adilabad District and others)** respectively and argued that at this belated stage, the Court should not entertain the petitioners' prayer for payment of compensation.

I have given serious thought to the respective arguments. By an order dated 26-2-

2003, Sri S. Ananda Reddy, J had directed District Collector, Karimnagar (respondent No.2) to conduct joint survey of the lands in question with regard to the factum of submersion and submit a report to this Court. In compliance of that order, the officer concerned got conducted joint inspection/survey through Mandal Revenue Officer, Sultanabad and officials of the Irrigation Department on 28-6-2003 and submitted report dated 4-7-2003 along with year-wise crop particulars for the period from 1991-92 to 2001-02 and a map. The relevant extracts of that report are reproduced below:

> "In compliance with the Hon'ble High Court Order in W.P.No.1493/1992 dt.26-2-2003, I submit that the Joint Survey has been conducted on 28-6-2003 along with irrigation officials in the presence of the petitioners (copy submitted) and found the following Sy.Nos. and extent of land coming under submersion of Garrepalli Tank as shown below:

S.No.	Name of the Village and Mandal	Sy. No.	Classifica-tion of land/patta or Govt.	Total extent of Sy.No.	Extent of submer-sion	Remarks
1.	Garrepalli (v) of Sulthanabad (M)	1501	Dry patta	2-29	2-29	Complete area submerged.
2.		1519	"" patta	1-09	1-09	""
3.		1520	"" patta	0-15	0-15	""
4.		1521	"" patta	1-05	1-05	""
5.		1522/A	"" patta	11-06	11-06	""
6.		1523	"" patta	10-01	10-01	""
7.		1524	"" patta	9-30	9-30	""
8.		1539	"" patta	14-26	1-20	Partly submerged
9.		1543	"" patta	8-10	8-10	Fully submerged
10.		1544	"" patta	5-36	5-36	""
11.		1545	"" patta	7-13	7-13	""
12.		1546	"" patta	7-24	7-24	""
13.		1547	"" patta	5-07	5-07	""
14.		1548	"" patta	6-00	6-00	""

15.		1549	“” patta	2-25	2-25	“”
16.		1550	“” patta	12-36	12-36	“”
17.		1552/1 to 9	“” patta	634-01	634-01	Fully submerged govt. land
18.		1624	Wet patta	1-15	1-15	Fully submerged
19.		1625	Wet patta	1-20	1-20	“”
20.	**Total:**			**743-28**	**730-22**	

Further I submit that the irrigation authorities have informed that there is no registered source of SRSP water for feeding the Garrepalli tank. The Garrepalli tank is having only natural source i.e., rain fed tank. The area submerged to the extent of petitioners is shown in the enclosed map along with the cultivation particulars w.e.f. 1992 to 2002.

Further, it is submitted that, out of extent of 730-22 acres submerged, an extent of 634-01 acres is government Shikam land, out of which an extent of 56-07 acres has been assigned to the landless poor persons, the remaining 577-34 acres is of Govt. shikam land. An extent of 96-21 acres of land is private patta. Out of total 96-21 acres land, 2-25 acres is wet land, remaining 93-36 acres is dry land. There are no structures or wells are found in the lands (copy enclosed).”

The petitioners have neither filed any affidavit to controvert the findings recorded in the aforementioned report nor they have produced any evidence to show that the facts mentioned in the report are incorrect. Therefore, it is reasonable to decide the petition by presuming that the contents of the report are correct.

A careful reading of the averments contained in the affidavit of Sri Hiralal Samaria, the then Joint Collector, Karimnagar and report dated 4-7-2003 shows that water is not supplied to Garrepalli tank from Sri Ram Sagar Project canals. The tank is a rain fed tank and there is no artificial source of filling it. It is, thus, clear that submergence of the land, if any, takes place due to the rain water and not on account of the artificial supply of water to the tank through the canals constructed by the irrigation department. Even during rainy season, the total land submerged is 732.22 acres, out of which 634.01 acres is government land, part of which has been assigned to the landless poor. An extent of 96.21 acres of submerged land is private land. Out of that, only 2.25 acres is wet land. The remaining land is dry land. As per the report, there are no structures or wells in the land. It is, thus, clear that the lands

of the petitioners do not get submerged on account of supply of water to Garrepalli tank through Sri Ram Sagar Project canals. Therefore, they are not entitled to seek a direction for acquisition of land and payment of compensation.

I am further of the view that the contentious issues of facts relating to the alleged submergence of land and the advertent or inadvertent contribution made by the department cannot be adjudicated by this Court in exercise of its power under Article 226 of the Constitution of India and the remedy, if any available to the petitioners to claim compensation is by way of a civil suit.

With the above observations, the writ petition is dismissed leaving the petitioners free to avail remedy by filing civil suit.

G.S. SINGHVI, CJ

12th April , 2006

svs